IN THE CHANCERY COURT OF ANDERSON COUNTY, TENNESSEE FOR THE SEVENTH JUDICIAL DISTRICT AT CLINTON, TENNESSEE

STATE OF TENNESSEE,)	
Plaintiff,)	
v.)	No
WILSON TOURS, INC., a Tennessee corporation, and MICHAEL A. WILSON,))	
individually and as President of WILSON TOURS, INC.,)	
Defendants.)	
COMPLAINT		

This civil action is brought in the name of the State of Tennessee, by and through Paul G. Summers, the Attorney General and Reporter ("Attorney General"), pursuant to Tenn. Code Ann. §§ 47-18-108(a)(1) and 47-18-114, at the request of David A. McCollum, Director of the Division of Consumer Affairs of the Tennessee Department of Commerce and Insurance ("Division"). The Division has reason to believe that the Defendants named herein have violated the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. §§ 47-18-101 *et seq.*, that Defendants have committed fraud against Tennessee consumers, and that this action is in the public interest.

I. JURISDICTION AND VENUE

- 1. The jurisdiction of this Court is invoked pursuant to the provision of Tenn. Code Ann. § 47-18-108. Venue is proper in Anderson County because it is the county in which Defendants conduct or have conducted business. *See* Tenn. Code Ann. § 47-18-108(a)(3). Defendants have been provided with the ten (10) days notice of contemplated legal action as set forth in Tenn. Code Ann. § 47-18-108(a)(2). *See* Exhibit A, Affidavit and Verification of David A. McCollum, Director of the Division.
- 2. The State acknowledges there is an individual Chapter 7 bankruptcy filed by Michael Anthony Wilson in the Eastern District of Tennessee, Northern Division, Case No. 00-34858. Cases interpreting 11 U.S.C. Section 362 allow liquidation of a claim with collection through the bankruptcy court. Any judgment against Mr. Wilson, personally, would be collected through the bankruptcy court.

Wilson Tours, Inc. has not filed for bankruptcy to our knowledge as of the filing of this complaint.

II. PARTIES

- 3. Pursuant to Tenn. Code Ann. §§ 47-18-108(a)(1) and 47-18-114, this action is commenced in the name of the State of Tennessee, by the Attorney General Paul G. Summers, at the request of the Division. *See* Exhibit A, Affidavit and Verification of David A. McCollum, Director of the Division of Consumer Affairs.
- 4. Defendant Michael A. Wilson is an individual with a principal place of business at 928 Charles Seivers Boulevard, Clinton, Tennessee 37716 and he is the sole owner and President of Wilson Tours, Inc. Individually, or in concert with others, Defendant Wilson controls and directs the operation and management of Wilson Tours, Inc.
- 5. Defendant Wilson Tours, Inc. is a Tennessee corporation with the last known principal place of business located at 928 Charles Seivers Boulevard in Clinton, Tennessee 37716.

III. FACTUAL ALLEGATIONS

Upon information and belief, the State alleges as follows:

- 6. In August 1988, Wilson Tours, Inc. (hereinafter "Wilson Tours") was incorporated under Tennessee law. The stated purpose of the corporation was to act as a travel service business, i.e., organize bus tours and transportation.
- 7. At an exact time unknown to the Plaintiff, but as least as early as March 1996,

 Defendant Wilson began operating and managing Wilson Tours. Defendant Wilson became the sole

 owner and President of Wilson Tours in November 1999.
- 8. The Defendants sent brochures and used local advertising (i.e. yellow pages) to solicit consumers. Many consumers solicited by the Defendants are over the age of 60.
- 9. Consumers were charged according to their specific tour's destination and length. For example, some consumers paid as much as \$7,264.00 for a 13-day trip to the Alpine Countries including a Passion Play in Germany.
- 10. Defendants' tours generally included travel expenses, lodging, some meals and a tour guide. Defendants often negotiated and made hotel arrangements for tourists as well as all the travel arrangements for a specific tour package.

- 11. Defendants organized tours to places such as Branson, Missouri; Tunica, Mississippi; Houston and San Antonio, Texas; Williamsburg, Virginia; Las Vegas, Nevada; Pikes Peak, Colorado; Memphis, Tennessee; California, the Southwest United States, and the Alpine Countries.
- 12. When consumers make reservations for a tour, they are required to pay a deposit. For example, some consumers have paid up to \$200 as a deposit toward a future tour.
- 13. Consumers are given a guarantee. Consumers are told that their tour may be canceled if there is not a sufficient number of participants for that particular tour. Consumers are also told that in the event of such cancellation, their deposit will either be (A) refunded to the consumer or (B) applied as a deposit to a future tour at the consumer's election.
 - 14. Beginning in January 2000, Defendants began canceling tours with some regularity.
- 15. Despite the cancellation refund policy, some consumers did not receive refunds they requested from Defendants for canceled tours.
- 16. In at least one instance, a consumer was advised that his originally scheduled tour was being canceled and his deposit applied to a future tour. The second tour was then canceled and the consumer's refund request has been unanswered.
- 17. Defendants also began asking consumers to pay the full balance toward future tours rather than just a deposit.
- 18. In many cases, consumers called to request refunds only to have those requests ignored.
- 19. In at least one case, Defendants assured a consumer that a refund would be forthcoming within 30 days of the request date. The consumer has not received that refund.
 - 20. It appears that the Defendants also:
 - (A) Negotiated for hotel rooms and meals on at least four occasions and attempted to pay the hotel with a check drawn on an account with insufficient funds; and
 - (B) Failed to pay a tour guide for services rendered.
- 21. Defendant falsely represented that tours would occur as scheduled and that consumers would receive a refund for canceled tours. In representing these facts, Defendant

knew or should have known that his financial status would cause tours to be canceled and he would be unable to give consumers refunds of their monies. Consumers reasonably relied on Defendant's false representations in paying for tours or in transferring money already paid on a canceled tour to a future tour.

- 22. As a result of the acts and practices alleged herein, consumers or other persons have suffered ascertainable losses.
- 23. Consumers, whose identities are unknown to the State of Tennessee at this time, are due monies from the Defendants.
- 24. The sale, operation and advertisement of Defendants' travel services business by Defendants, as alleged herein, constitutes "trade", "commerce" and/or a "consumer transaction" and the offering of or providing of "goods" and/or "services" as defined in Tenn. Code Ann. §§ 47-18-103(5), (10) and (11).

IV. VIOLATIONS OF THE LAW

25. Defendants' representations regarding their refund policy and their failure to make refunds as represented are unfair or deceptive acts or practices in violation of the Tennessee Consumer Protection Act of 1977. Such unfair or deceptive acts and practices specifically violate Tenn. Code Ann. §§ 47-18-104(a), (b)(5), (b)(12), (b)(19),(b)(27) and 47-18-120(c)(3)(A)-(B) which prohibit (in pertinent part):

47-18-104:

- (a) Unfair or deceptive acts or practices affecting the conduct of any trade or commerce constitute unlawful acts or practice . . .
- (b) Without limiting the scope of subsection (a), the following unfair or deceptive acts or practices affecting the conduct of any trade or commerce are declared to be unlawful and in violation of this part:
 - (5) Representing that goods or services have characteristics, uses, benefits that they do not have or that a person has a sponsorship approval, status, affiliation or connection that such person does not have;
 - (12) Representing that a consumer transaction confers or involves rights, remedies or obligations that it does not have or involve or which are prohibited by law;
 - (19) Representing that a guarantee or warranty confers or involves rights or remedies which it does not have or involve;

(27) Engaging in any other act or practice which is deceptive to the consumer or to any other person;

47-18-120:

- (c) In addition to and without limiting the prohibitions contained in § 47-18-104, the following unfair or deceptive acts or practices are declared unlawful and in violation of this part:
- (3) The offeror is in violation of this part if at any time the offeror:
 - (A) Misrepresents in any manner the rules, terms, restrictions, monetary obligations or conditions of participation in the offer
 - (B) Represents that the travel service offered possesses particular features or benefits if it does not
- 26. Defendants' act or practice of targeting elder persons for tours which are subsequently canceled is an unfair or deceptive act or practice in violation of the Tennessee Consumer Protection Act of 1977. Such unfair or deceptive acts and practices specifically violate Tenn. Code Ann. §§ 47-18-125 which prohibits (in pertinent part):
 - (a) Any person who knowingly uses, or has knowingly used, a method, act or practice which targets elderly persons and is in violation of the Tennessee Consumer Protection Act, compiled in part 1 of this chapter, is liable to the state of Tennessee for a civil penalty of not more than ten thousand (\$10,000) dollars for each violation.
- 27. By intentionally or recklessly misrepresenting the occurrence of scheduled tours and the refund policy of Wilson Tours, Inc., thereby causing consumers to suffer ascertainable loss by way of reasonable reliance on those representations, Defendants have committed fraud against those consumers in violation of Tennessee common law as defined by the courts of this State.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, THE STATE OF TENNESSEE PRAYS:

- (1) That this Complaint be filed without cost bond as provided by Tenn. Code Ann. §§ 20-13-101, 47-18-108, and 47-18-116.
- (2) That process issue and be served upon Defendants requiring them to appear and answer this Complaint.
 - (3) That this Court adjudge and decree that Defendants have engaged in the aforesaid acts

or practices, which are in violation of the Tennessee Consumer Protection Act of 1977.

- (4) That this Court enjoin Defendants from engaging in the aforesaid acts or practices, which are in violation of the Tennessee Consumer Protection Act of 1977.
- (5) That this Court adjudge and decree that the Defendants are liable to the State for the reasonable costs and expenses of the investigation and prosecution of the Defendants' actions, including attorneys' fees, as provided by Tenn. Code Ann. §§ 47-18-108(b)(4) and (a)(5).
- (6) That this Court make such orders or render such judgments as may be necessary to restore to any consumer or other person any ascertainable losses suffered by reason of the alleged violations of the Tennessee Consumer Protection Act of 1977 including statutory interest as provided by Tenn. Code Ann. § 47-18-108(b)(1).
- (7) That this Court adjudge and decree that the Defendants pay civil penalties of not more than one thousand dollars (\$1,000.00) per violation to the State as provided by Tenn. Code Ann. § 47-18-108(b)(3).
- (8) That this Court adjudge and decree that the Defendants pay civil penalties of a minimum of one thousand dollars (\$1,000.00) to a maximum of ten (10) times the amounts collected or requested per violation to the State as provided by Tenn. Code Ann. § 47-18-120(g).
- (9) That this Court adjudge and decree that the Defendants pay civil penalties of not more than ten thousand dollars (\$10,000.00) for each violation of Tenn. Code Ann. § 47-18-125.
 - (10) That all costs in this cause be taxed against Defendants.
- (11) That this Court liquidate all monies awarded against Michael A. Wilson so that they may be collected pursuant to bankruptcy law or otherwise through the bankruptcy proceeding.
- (12) That this Court grant Plaintiff such other and further relief as this Court deems just and proper.

Respectfully submitted,

PAUL G. SUMMERS Attorney General and Reporter B.P.R. No. 6285

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